

Residential Tenancies Tribunal

Application 2023-1140-NL &
2024-0024-NL

Decision 23-1140-00 &
24-0024-00

Michael Reddy
Adjudicator

Introduction

1. The hearing was call at 9:01 AM on 31 January 2024 via teleconference. The hearing was to adjudicate two separate applications: 2023-1140-NL and 2024-0024-NL.
2. [REDACTED], hereinafter referred to as “tenant1”, attended the hearing. [REDACTED] [REDACTED], hereinafter referred to as “tenant2”, attended the hearing. The tenants did not call any witnesses.
3. [REDACTED], hereinafter referred to as “the landlord”, attended the hearing. The landlord had an Authorized Representative, [REDACTED], who attended the hearing (**Exhibit L # 1**). The landlord did not call any witnesses.

Preliminary Matters

4. The tenants submitted an affidavit of service indicating on 4 January 2024 at 9:45 PM, the landlord was sent an Application for Dispute Resolution via electronic mail at [REDACTED] (**Exhibit T # 1**). The landlord did not dispute this service. This is identified as appropriate service.
5. The tenants did not seek any amendments to their application.
6. The landlord submitted an affidavit (**Exhibit L # 2**) indicating tenant1 and tenant2 were served on 12 January 2024 at 9:00 AM an Application for Dispute Resolution via electronic mail at [REDACTED] and [REDACTED]. The tenants did not dispute this service. This is identified as appropriate service.
7. In a proceeding under the *Residential Tenancies Act*, 2018, the applicant has the burden of proof. This means the applicant has the responsibility to prove that the outcome they are requesting should be granted. In these proceedings the standard of proof is referred to as the balance of probabilities which means the applicant has to establish that his/her account of events are more likely than not to have happened.

Issues before the Tribunal

8. The tenants are seeking the following:
 1. Return of the Security Deposit (\$900.00).
 2. Compensation of the hearing expenses (\$20.00).
9. The landlord is seeking the following:
 1. Compensation for Damages (\$3,050.00)
 2. The Security Deposit to be used against money owing (\$900.00)
 3. Compensation of the hearing expense (\$20.00).

Legislation and Policy

10. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of "*the Act*".
11. Also relevant and considered in this case are sections 10, 14, 18, 31 and 34 of the *Residential Tenancies Act*, 2018. Also, Residential Tenancies Policies 9-003, and 9-005.

Issue 1: Compensation for Damages- \$3,050.00/ Disposition of Security Deposit- \$900.00

Landlord Position

12. The landlord testified there was a verbal monthly rental agreement which started on 1 August 2019 at the rental property of [REDACTED]. The monthly rent amount was set at \$1,200.00, and due on the first of each month. There was a security deposit collected on this tenancy of \$900.00 collected on 27 June 2019 which the landlord remains in possession of (**Exhibit L # 3**).
13. The landlord stated the tenants were not occupants of the rental as of the day of the hearing (31 January 2024).
14. The landlord was seeking compensation for damages of \$3,050.00 and for the security deposit to be used against this. Along with his application, the landlord provided a breakdown of the damages (**Exhibit L # 4**) as follows:

- Garbage removal..... \$200.00
- Apartment cleaning..... \$300.00
- Plaster/Paint..... \$1,450.00
- Repair of Window Sill..... \$150.00
- Repair Flooring..... \$950.00
- Total..... \$3,050.00

15. The landlord provided pictures of the rental property following the tenants vacating the rental property (**Exhibit L # 5**).

16. There are 5 items in that breakdown, and I've grouped them under the following headers:

Garbage Removal

Landlord Position

17. The landlord broke down the garbage removal of the rental unit as including clean-up of the shed on the property, the barbecue left outside the rental unit and the cupboards in the kitchen.

18. The landlord indicated a cleaning amount for removal of this garbage as being \$200.00 as he attended the rental on 4 November 2023 at which time he removed the BBQ, the propane tank for the BBQ, garbage bags inside the shed, along with garbage inside the rental.

19. The landlord stated prior to the tenants moving in, the shed was clean and he broke down his self-labour as suggested by the *Residential Tenancies Program, Policy 09-005* which identifies self-labour as being the equivalent to minimum wage (\$15.60) + \$8.00 per hour. Using this guideline, the landlord is suggesting he worked 8.47 hours (\$200.00 ÷ \$23.60) to remove the garbage in the rental unit.

20. The landlord did not provide pictures of the shed or the kitchen prior to the tenants' occupancy.

Tenants Position

21. Tenant1 did not dispute the BBQ was left at the rental property after they had vacated the property. In relation to the garbage left inside the shed, tenant1 testified there was garbage in the shed when they gained occupancy of the [REDACTED] [REDACTED] and stated the tenant in the basement apartment of the rental, also used the shed for storage. Tenant1 disputed the clean up in the shed was their responsibility.

Cleaning

Landlord Position

22. The landlord testified there was, "a significant amount" of cleaning required which he started on 4 November 2023 for two days. He was seeking \$300.00 for two days of work required to clean the rental unit, which also included compensation for the cleaning supplies required to perform the clean-up.

23. The landlord's Authorized Representative testified he observed the cleaning required and along with the landlord's application, he provided pictures taken on 4 November 2023 (**Exhibit L # 5**).

24. There were no receipts of the cost of the cleaning supplies provided by the landlord along with his application. The landlord provided pictures of the rental unit prior to the tenants' occupancy which reflect a clean property.

Tenants Position

25. Tenant1 testified that cleaning an apartment was "part of" renting. She also stated on 4 November 2023, the landlord had claimed he had sanded and painted the apartment. Following this, she stated cleaning was required and the tenants should not be responsible for clean up after sanding and painting the apartment after they vacated.
26. Tenant1 also questioned why a two-bedroom apartment would require two days for cleaning.

Painting and Plastering

Landlord Position

27. The landlord testified plastering and painting was required due to the number of "nail holes" inside the rental left by the tenants. He stated before the tenants moved in was the last time the rental unit was painted. The landlord advised the only room of the apartment he did not paint was the kitchen.
28. The landlord stated he was seeking compensation for paint and time spent plastering and painting in the amount of \$1,450.00. During his testimony, the landlord did state the tenants had previously requested if they could paint an "access wall" which he approved. He stated he painted for 40 hours and was seeking compensation for two gallons of paint.
29. The landlord did not provide pictures of the rental unit prior to the tenants' occupancy.

Tenants Position

30. Tenant1 testified they had contacted the landlord prior to 4 November 2023 about potential return of the security deposit at which time he stated plastering would have to be completed in the unit. She stated after being informed that the security deposit may not be returned to them by the landlord, she entered the rental and completed plastering of nail holes (**Exhibit T # 2**). Following this, she did not sand and paint due to her not having the paint, not being a professional painter and being unable color match. She also testified they were never asked to paint and summarized the landlord's need to repaint as being due to normal "wear and tear."
31. Tenant1 disputed that a two-bedroom apartment would take 40 hours to re-paint.

Windowsill

Landlord Position

32. The landlord was seeking \$150.00 compensation for paint and the work required to scrape the windowsill. He stated the windowsill was discolored.
33. The landlord did not provide pictures of the rental unit prior to the tenants' occupancy. There were pictures dated June 2019 of the house, however, there does not appear to be a picture of the window/windowsill in question.

Tenants Position

34. Tenant1 testified they had placed putty in a hole in the window due to a water leak in the vinyl window. She described having to repaint after four years of tenancy as normal.
35. Tenant1 questioned that painting a two-bedroom apartment would require 40 hours of work.

Flooring

Landlord Position

36. The landlord was seeking \$950.00 for damaged flooring and stated the age of the flooring was 4 years. He testified he had to replace between 12 and 14 square feet of the flooring to replace and he had a box of the flooring left over from when he installed it. He stated it was the same flooring and testified, "you can see the patch. To fix that floor, it has to all come up". There was no information offered by the landlord about what type of flooring had to be replaced.
37. The landlord's Authorized Representative testified there was no evidence of water which caused damage to the flooring.
38. The landlord testified for the whole flooring in the living room to be replaced, it would take him 15 hours. He stated this was his guess how long this repair would take to complete and offered, "it was just a number of hours I put in".
39. The landlord did provide pictures of the rental unit prior to the tenants' occupancy in July 2019 when the flooring appeared in good condition. Of note, the landlord did not offer any receipts of the cost of the flooring.

Tenants Position

40. Tenant1 stated there was a rocking chair on the floor where the flooring had loosened. She testified they had not done anything to damage the floor as a mat had been placed under the rocking chair and disputed the landlord's claim that the floor had to be replaced because it did not match the other flooring.

Analysis

41. Under sections 10.1 and 10.2 of the *Residential Tenancies Act, 2018* the landlord/tenant are responsible to keep the premises clean and to repair any damages caused by a willful or negligent act.
42. **Statutory conditions**

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord- The landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

2. Obligation of the Tenant- The tenant shall keep the residential premises clean, and shall repair damaged caused by a willful or negligent act of the tenant or of a person whom the tenant permits on the residential property.

Accordingly, in any damage claim, the applicant is required to show:
That the damage exists;

That the respondent is responsible for the damage, through willful or negligent act; and

The value to repair or replace the damaged item(s).

43. The landlord was seeking compensation for damages in the amount of \$3,050.00 and to use the security deposit of \$900.00 to be used against damages. *Policy 9-003, Claims for Damages to Rental Premises of the Residential Tenancies Program* is applicable to the landlord's application. As stated within that policy, "*When making a claim for damages, the applicant shall indicate the total amount of the claim and a detailed breakdown of the damages, with each item valued. Claims exceeding the amount of the security deposit shall be accompanied by at least one independent written estimate or receipt(s).* The landlord did not provide an independent written estimate of his damage claim.

Garbage removal and Apartment cleaning:

44. I do accept the testimony of the landlord and landlord's Authorized Representative the BBQ was in the shed after the tenants' vacated. I also accept the evidence the kitchen had to be cleaning. I do not accept the BBQ removal and cleaning of the kitchen would have taken 2 days. I find any able-bodied individual could remove the BBQ and clean the kitchen of a two-bedroom apartment in three hours.

45. I find the landlord is entitled to **\$70.80** of the security deposit for garbage removal and cleaning, broken down as follows: \$15.60 (minimum wage) + \$8.00 per hour \times 3 hours= \$70.80.

Plastering, Painting and Windowsill repair:

46. In review of the evidence and testimony offered by tenant1, she stated shortly after vacating the rental property, she contacted the landlord about return of the security deposit. She had been informed by the landlord that there were concerns with the "number of nail holes" in the apartment and entered the apartment and completed plastering of the nail holes. The landlord did not dispute the plastering was completed by the tenant. This is not what I would consider a negligent act of the tenant to cause damage to the rental.

47. In relation to having to plaster and paint the rental, *Policy 9-005, Life Expectancy of Property of the Residential Tenancies Program* also applies to the landlords' requests for compensation. As stated within that policy, the life expectancy of good grade painting and finishes is between 3 to 5 years. The landlord testified the rental had been painted prior to the tenants' taking occupancy in August 2019. As of the date of the hearing (31

January 2024), the last time the apartment had been painted according to the landlord, was over three years ago. As presented by the timelines in Policy 009-005, the apartment was scheduled for re-painting.

48. Based on the evidence provided, there is no evidence suggesting that the tenant's willful or negligence caused damages. With the exception of the plastering of nail holes, which the tenant completed, the repainting of the premises can be attributed to normal wear and tear.
49. This portion of the landlord's claim fails.

Flooring

50. The pictures provided by the landlord does demonstrate some damage to a section of the flooring. *Policy 09-003* is also very specific as to what is required for a damage claims. Specifically, "*Evidence and pertinent information (age and original vale of the damaged property) should be presented at the hearing*". During the hearing, the landlord did not provide the original costs of the flooring installation. Furthermore, there was no indication if the flooring was hardwood or laminate, both which have different life expectancies. As well, there was evidence (i.e. pictures) of the flooring prior to the tenants taking occupancy of the rental.
51. The onus is always on the side making the claim to establish the basis of the claim on the balance of probabilities, and to provide sufficient evidence on which to make a ruling. In this case, the only evidence of the damage to the flooring is the landlord's oral testimony and a picture demonstrating some damage to the floorboards in one room, which the tenant disputes. I find there is insufficient evidence to demonstrate that the damage was as a result of willful or negligent actions by the tenant. The claim fails on evidentiary grounds.

Decision

52. The landlord's claim for damages succeeds in the amount of **\$70.80**.
53. The landlord shall return the security deposit in the amount of **\$829.20** to the tenants.

Issue # 2- Hearing Expenses

54. The landlord provided a receipt for hearing expense (**Exhibit L # 6**).
55. The tenants provided a receipt for hearing expense (**Exhibit T # 3**).

Analysis

56. The *Residential Tenancies Program, Policy and Procedure Guide, Policy Number 12.001, Recovery of Costs*, speaks directly to seeking costs associated with an application. In accordance with policy, "as a general rule, the \$20.00 filing fee, should, in most cases, be awarded to the successful party".
57. As the tenant is primarily successful in their claim, they will be awarded the \$20.00 filing fee.

58. As such, I find the tenant is entitled to \$20.00.

Decision

59. The landlord shall pay **\$20.00** to the tenant for hearing expenses.

Summary of Decision

60. The landlord shall pay the tenants **\$849.20** broken down as follows:

- Return of Security Deposit.....\$900.00
- Compensation for Damages.....-70.80
- Hearing Expense.....\$20.00
- Total.....**\$849.20**

14 May 2024

Date

Michael J. Reddy
Residential Tenancies Office